

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRILANKA

In the matter of an Application for bail
under and in terms of Section 83 (2) of the
Poisons, Opium and Dangerous Drugs Act
as amended by Act No. 41 of 2022.

Officer in Charge
Harbour Police Station
Galle

Complainant

-Vs-

Mohamed Hanifa Mohamed Hijaz

Suspect

AND NOW BETWEEN

Mohamed Faizel Fathumma Faheema
No. 220/11 Kongaha Road, Main Road,
Thalapitiya, Galle

Petitioner

-Vs-

1) Hon. Attorney General,
Attorney General's Department,
Colombo 12.

2) Officer in Charge
Harbour Police Station
Galle

Respondents

Court of Appeal Bail Application:

CA/BAL/0143/2025

Case No. MC Galle **BR – 3330/24**

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Suranga Bandara for the Petitioner.
Shezan Mahaboob, SC for the Respondents.

Inquiry on : 25.08.2025

Decided on : 19.09.2025

Pradeep Hettiarachchi, J

Order

1. This is an Application for bail filed by the Petitioner named Mohammed Faizal Fathumma Faheema (hereinafter referred to as “the Petitioner”). The Petitioner is the mistress of the Suspect named Mohamed Hanifa Mohamed Hijaz (hereinafter referred to as “the Suspect”) under section 83(2) of the Poisons, Opium and Dangerous Drugs Ordinance (hereinafter sometimes referred to as “the Ordinance”).
2. According to the B-Report dated 14-07-2024, annexed to the Petition, the Suspect had been arrested on 13-07-2024 by IP Meshan Induka De Silva attached to the Galle Habor Police subsequent to a raid conducted by him based on some information received by Police Sergeant Nishantha near Makuluwa Railway. The Suspect had been arrested while he was on a motor bicycle bearing No. SP BCF 2131. Upon searching the Suspect, the Police has found in his possession 18 grams and 210 miligrams of Methamphetamine, an offence punishable under section 54A1(d) of the Ordinance. Thereafter, the Accused was produced before the Magistrate Court of Galle on 14-07-2024 and he has been in remand custody since the date of arrest.

3. As per the Government Analyst Report dated 31-12-2024, the net quantity of Methamphetamine recovered from the Suspect was 11.40 grams.
4. The Respondents have filed their Objections dated 18-08-2025. In the Objections it was stated that the Petitioner has failed to establish exceptional circumstances; the Suspect, if found guilty will be served with either the death sentence or life imprisonment, therefore, the the risk of the Suspect absconding if granted bail is high and the amount of Heroin recovered from the Accused is not a user quantity, but a commercial quantity which indicates that the Accused is a drug dealer of large scale.
5. Under section 83(2), this Court can consider bail only if exceptional circumstances are made out. Section 83 as amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022 reads:

Section 83. (1) Subject to the provisions of sections 84, 85 and subsection (2) of this section, a person suspected or accused of an offence under sections 54A and 54B of this Ordinance, shall not be released on bail by the High Court except in exceptional circumstances.

(2) Notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an - (a) of which the pure quantity of the dangerous drug, trafficked, imported, exported or possessed is ten grammes or above in terms of the report issued by the Government Analyst under section 77A; and (b) which is punishable with death or life imprisonment, [sic] shall not be released on bail except by the Court of Appeal in exceptional circumstances.

(3) For the purposes of this section “dangerous drug” means Morphine, Cocaine, Heroin and Methamphetamine.

6. The provisions of section 83 (2) as amended by Act, No. 41 of 2022, manifest the intention of the legislature, i.e., a person accused or suspected of being in possession of 10 grams or

more of the dangerous drugs is required to be kept in remand, unless such person satisfies this Court as to the existence of circumstances that are exceptional. Therefore, the burden is on the Suspect to establish the existence of exceptional circumstances.

7. However, the exceptional circumstances are not defined in the Ordinance. Therefore, whether the grounds advanced by the Petitioner constitute exceptional circumstances must be determined based on the specific facts and circumstances of each case.
8. As stated in ***Ramu Thamodarampillai v The Attorney General*** [2004] 3 Sri. LR 180, “the decision must in each case depend on its own particular facts and circumstances.
9. The following grounds have been urged by the Petitioner as exceptional circumstances warranting consideration for bail:
 - (a) The Petitioner was also arrested along with the Suspect in this matter. She is a witness to the incident. According to the Petitioner, the facts narrated by the Police are not the gospel truth, and the real story is that the Petitioner was arrested not elsewhere, but was arrested at room No. 2 of the Southern Ocean View Hotel.
 - (b) The Police attempted to cover up the story. They did not, intentionally disclose the time of arrest and filed a different B-Report because the Petitioner was also arrested with the Suspect. The Police had been too careful not to disclose the time of arrest of both Suspects.
 - (c) Since the Petitioner is an eye witness to the aforesaid incident, her evidence is very pertinent against of the Police. Her evidence would strongly affect the prosecution’s version and the probability of the Suspect being acquitted is very high.
10. Accordingly, the Petitioner mainly disputes the place and the time of arrest of the Suspect. According to the Petitioner’s version, the Suspect had been arrested at the room No. 2 of the Southern Ocean View Hotel along with the Petitioner. The time of the Suspect’s arrest is not mentioned in the B-Report submitted by the Police. Furthermore, the Police has submitted a

separate B-Report (Annexed to the Petition dated 28-04-2025, marked as P3) to the Magistrate Court of Galle regarding the arrest of the Petitioner. According to the said B-Report marked P3 to the Petition, the Petitioner was arrested at the Southern Ocean View Hotel by the Police subsequent to some information received from the Suspect. In that B-Report too, the Police has not mentioned the time of arrest of the Petitioner. This, in my opinion, creates a reasonable doubt on the Prosecutions' version of events regarding the arrest. Moreover, the Respondents have not given any explanation regarding the omission of the time of arrest in the two B-Reports. Nor have they given any explanation regarding the manner and the place of arrest which has been disputed by the Petitioner.

11. Furthermore, it is important to note that while there are no pending cases against the Suspect the Suspect has three previous convictions for offenses of similar nature. He has been found guilty and imposed fines by the Magistrate Court of Galle on three separate occasions during the period of 2019-2023 for keeping in his possession the substances such as Cannabis Sativa L and Diacetyl Morphine.
12. The delay in prosecuting the Suspect has not been mentioned in the Petition as an exceptional ground warranting the granting of bail to the Suspect. However, whilst applying the stringent bail provisions contained in section 83(2) of the Ordinance this Court should not lose the sight of the injustice that will be caused to a suspect whose liberty is curtailed due to the delay in prosecuting him.
13. In the present Application, it is important to note that the Suspect has been in remand since 13-07-2024. As per the journal entries, the Suspect has been charged in the Magistrate Court of Galle on 18-02-2025 for committing an offence under section 78(5)(a) of the Ordinance and Suspect has also pled guilty for committing the said offence, after which a fine of Rs. 5000/- was imposed on him by the learned Magistrate. Thereafter, it was brought to the attention of the learned Magistrate that pure quantity of Methamphetamine mentioned in the Government Analyst Report was more than 10 grams. Accordingly, the Police has sought the permission of the learned Magistrate to withdraw the Charge Sheet. The Suspect was not yet indicted before High Court and it was informed to this Court that the IB Extracts have not yet

reached the Attorney General's Department. Therefore, there is an uncertainty as to when the trial against the Suspect will commence in the High Court.

14. In the aforesaid circumstances, the delay of one year and two months, when considered in conjunction with the failure to provide an explanation for the delay in prosecuting the Suspect and the doubt created on the Prosecution's version of events regarding the time and the place of arrest of the Suspect may be regarded as exceptional. It is important to emphasize that when a person is deprived of their liberty and held in detention; those responsible for such deprivation must consciously and diligently take the necessary steps to conclude legal action. If no reasonable explanation is provided for any delay, such delay will be deemed excessive or oppressive.
15. Based on the above analysis, I am inclined to grant bail to the Suspect subject to the following conditions;
- (a) Rs 100, 000/- cash bail;
 - (b) To provide two sureties who should execute bonds to the value of Rs. 500,000.00 each;
 - (c) The sureties should provide certificates from the Grama Sevaka and police reports from respective residential areas of such sureties;
 - (d) The Suspect shall surrender the passport or any travel document of the Suspect, if he has any, to the Registrar of the Magistrate Court of Galle.
 - (e) The Suspect is ordered to report to the Officer-in-Charge of the Harbor Police Station Galle on every last Sunday before 12 noon.
16. This Application is accordingly allowed, and the Registrar of this Court is directed to transmit a copy of this Order to the Registrar of the Magistrate Court of Galle and to the Officer-in-Charge of the Harbor Police Station Galle forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal